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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MAIL BOXES ETC., INC.,

12 Plaintiff,

13 vs.

14 JEDOJE, INC. and JOSE ESCUDERO,
15 individually,

16 Defendant.

CASE NO. 10cv0428 DMS (RBB)

**ORDER (1) FIXING AMOUNT OF
ATTORNEYS FEES AND COSTS
AND (2) FINDING DEFENDANTS
IN CONTEMPT AND AWARDING
SANCTIONS**

[Docket No. 29]

17 This case comes before the Court on Plaintiff's request to fix the amount of Plaintiff's
18 attorneys fees and costs on the judgment, and for a contempt finding against Defendants. On the
19 judgment, Plaintiff requests \$49,848 in fees and \$3,380.29 in costs. On the issue of contempt, Plaintiff
20 asserts that a contempt finding is warranted in light of Defendants' failure to comply with the
21 Permanent Injunction issued on May 20, 2010. Plaintiff seeks coercive sanctions of \$1,000 per day
22 for each day that Defendants remain in violation of the Injunction, and compensatory sanctions of \$70
23 per day for each day that Defendants remain in violation of the Injunction and attorneys fees and costs
24 incurred in bringing the motion for contempt.

25 **I.**

26 **BACKGROUND**

27 On February 24, 2010, Plaintiff filed the present case against Defendants Jedoje, Inc. and Jose
28 Escudero alleging claims for breach of a license agreement, breach of a settlement agreement and

1 specific performance. Plaintiff filed a First Amended Complaint on March 8, 2010, realleging the
2 claims in the original Complaint and alleging new claims for trademark infringement, federal unfair
3 competition and common law misappropriation.

4 Two days after filing the First Amended Complaint, Plaintiff filed an *ex parte* motion for a
5 temporary restraining order. After reviewing that motion, and failing to receive a response from
6 Defendants, on March 15, 2010, the Court granted the motion and issued a temporary restraining order
7 and order to show cause re: preliminary injunction. That order set a hearing date for the preliminary
8 injunction, and ordered Defendants to file a response no later than five court days before that hearing.
9 After failing to receive a response from Defendants, the Court issued a preliminary injunction on
10 March 26, 2010.

11 On April 6, 2010, Plaintiff requested entry of default against Defendants for their failure to
12 respond to the First Amended Complaint. Defaults were entered that day. Plaintiff thereafter moved
13 for entry of default judgment. Again, Defendants failed to respond. Thus, on May 20, 2010, the Court
14 entered default judgment and a permanent injunction against Defendants.

15 II.

16 APPLICATION TO FIX AMOUNT OF ATTORNEYS FEES AND COSTS

17 In the default judgment and permanent injunction, the Court invited Plaintiff's counsel to
18 submit a further petition for attorneys fees and costs, which counsel has done. In that petition, counsel
19 request \$49,848.29 in attorneys fees and \$3,380.29 in costs. The Court has reviewed the records
20 submitted in support of these amounts, and finds the requested amounts are reasonable and
21 appropriate. Accordingly, the Court awards Plaintiff \$49,848.29 in attorneys fees and \$3,380.29 in
22 costs.

23 III.

24 CONTEMPT AND SANCTIONS

25 "To hold a party in contempt, a court must find by clear and convincing evidence that the party
26 violated a specific and definite order and that it had sufficient notice of its terms and the fact that it
27 would be sanctioned if it did not comply." *Verizon California Inc. v. OnlineNIC, Inc.*, 647 F.Supp.2d
28 1110, 1115 (N.D. Cal. 2009).

1 Here, Plaintiff asserts that Defendants are in contempt of that portion of the injunction that
2 restrained Defendants from the following conduct:

3 for a period of six (6) months from the entry of the injunction, being associated either
4 directly or indirectly, by virtue of being an employee, proprietor, partner, stockholder,
5 agent, principal, owner, part-owner, co-venturer, officer, director, manager, operator,
6 financier, salesman, or other participant or through family relationships, with a
competing business within what was formerly the protected franchise territory. A
competing business shall be one that is generally engaged in and offers postal,
communication and business services and products and related services and products.

7 (Docket No. 27 at 2.) Plaintiff also asserts Defendants have failed to comply with reporting
8 requirement of the injunction, which required Defendants to “file with the Court, and serve upon
9 Plaintiffs’ counsel, within thirty (30) days after entry of judgment, a report signed by all Defendants
10 under oath, setting forth in detail the manner and form in which Defendants have complied with the
11 judgment of the Court[.]” (*Id.*)

12 Plaintiff has shown by clear and convincing evidence that Defendants have failed to comply
13 with the reporting requirement. Plaintiff’s counsel declares that he is “not aware of any contact or
14 communication by Defendants or their counsel following entry of the permanent injunction.” (Decl.
15 of Timothy S. Blackford in Supp. of Ex Parte Application ¶ 7.) Furthermore, the Court has not
16 received any communication from Defendants about the status of their compliance with the injunction.
17 Plaintiff has shown that it served a copy of the injunction on Defendants’ counsel, and also served
18 Defendants’ counsel with a copy of the order to show cause why Defendants should not be found in
19 contempt. Therefore, Plaintiff is entitled to a finding of contempt for Defendants’ failure to comply
20 with the injunction’s reporting requirement.

21 Plaintiff is not entitled to a contempt finding, however, on the non-compete portion of the
22 injunction. Although the evidence presently before the Court reflects the presence of a FedEx
23 business center in the same location as Defendants’ former business, Plaintiff has failed to provide the
24 Court with any evidence that Defendants are operating that FedEx business. Absent such evidence,
25 Plaintiff has not met its burden of proving by clear and convincing evidence that Defendants are in
26 contempt of the non-compete portion of the injunction.

27 The only issue thus remaining is the sanction to be imposed. Plaintiff seeks compensatory
28 sanctions in the amount of \$70 per day and an award of attorneys fees and costs incurred in bringing

1 this contempt proceeding. Plaintiff also seeks a coercive sanction of \$1,000 per day. The basis for
2 the amount of compensatory sanctions appears to be Defendants' failure to comply with the non-
3 compete portion of the injunction. However, in light of the Court's finding on that issue, the Court
4 declines to award those sanctions. Nevertheless, the Court finds attorneys fees and costs are
5 appropriate, as is a lesser coercive sanction to ensure Defendants' compliance with the reporting
6 requirement. Accordingly, the Court awards Plaintiff attorneys fees and costs in the amount of
7 \$6,004, and imposes coercive sanctions of \$50 per day.

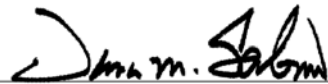
8 **IV.**

9 **CONCLUSION AND ORDER**

10 For the reasons set out above, the Court fixes the amount of Plaintiff's attorneys fees and costs
11 as \$49,848 and \$3,380.29, respectively. The Court also finds Defendants are in contempt of the
12 injunction, and issues attorneys fees and costs in the amount of \$6,004, and coercive sanctions in the
13 amount of \$50 per day. Plaintiff shall serve this order on Defendants' counsel, and shall also serve
14 a copy on Defendant Escudero, personally. The coercive sanctions shall take effect upon receipt of
15 proof of service as directed.

16 **IT IS SO ORDERED.**

17 DATED: September 28, 2010

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19 HON. DANA M. SABRAW
20 United States District Judge
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